

REMARKS/ARGUMENTS

A. In the Specification

1. No paragraphs have been amended in the specification to clarify previously disclosed matter and/or correct language, reference labeling, figure description, and/or syntax. No new matter has been added.

B. In the Claims

1. Previously filed claims 1 - 20 have been cancelled. New claims 21- 38 have been added to correct language, syntax, avoid the citation of the prior art, and/or point out the specific features of Applicant's invention with greater clarity. Support for new claims 21-38 is found throughout the specification, and more particularly in paragraphs [0013], [0015], [0020] and [0045] of patent application serial number 10/625,138, as originally filed. No new matter has been added.

Regarding the Former Claim Rejections under 35 U.S.C. 103

2. Previously filed claims have been finally rejected under 35 U.S.C. 103 as being unpatentable over Miyamoto (JP 59022583). Applicant respectfully disagrees with this obviousness rejection in light of the amendments to the claims filed with this RCE, and the accompanying arguments presented in support of the claims at issue herein (see below).

3. As per new independent claim 21, Applicant respectfully disagrees with the conclusion drawn in the Advisory Action that the concept of "whereby the resulting consumable mineral supplement composition has varying mineral content depending upon said plant material provided in step a)" constitutes new matter, as it is Applicant's belief that the original specification clearly disclosed this concept, both literally expressed and in examples. All throughout the specification three different plant materials are compared, that is, juniper, eucalyptus and sea kelp, just to name a few. Tables 1, 2 and 3 disclose the mineral elements found in each, respectively.

Additionally, there is literal express support for new claim 21 in at least paragraphs [0013], [0015], 0020], and [0045]. Claim 21 covers the concept supported in the specification that selectively using differing, varying plant material is useful in creating supplements high in certain minerals for treating ailments which respond to ingestion of those mineral elements. Therefore, as amended, Applicant now believes that claim 21 is in condition for allowance.

Additionally, new claim 21 requires that the powder be homogenized, pasteurized and sterilized for human and animal consumption. The prior art does not make obvious this set of steps in order to generate a consumable mineral supplement. Miyamoto does not even remotely suggest ingestion of the “ash dip” disclosed therein. Therefore, Miyamoto does not make the present invention obvious especially in light of the new claims submitted herein.

The idea that this claim is somehow a “recipe” does not hold water. The example embodiments do teach certain combinations for using the mineral supplement from plant ash in various ways, and may appear to be “recipes.” However, claim 21 and its dependent claims 22-38 do not attempt to claim a “recipe” in any way. The process of generating a consumable mineral supplement is disclosed and claimed. This invention is patentable, and it is not anticipated by any other prior art. Furthermore, the Miyamoto patent does not even remotely suggest that the “ash dip” be consumable, therefore, it does not make the present invention obvious. To project that the Miyamoto patent somehow teaches the method steps of the present invention is a stretch of logic that cannot be supported by the facts, and therefore, as a matter of law, in particular the requirements of a 35 USC 103 obviousness rejection, must fail on its face.

Claims 22-38 all depend from claim 21, either directly or indirectly as each claim depends directly from claim 21 or a claim that depends from claim 21. In this respect, Applicant strongly believes that all of the claims as submitted herein are in condition for allowance.


CONCLUSION

All of the objections and rejections previously raised by the Examiner have been addressed by Applicant. Attorney for Applicant has carefully reviewed the cited reference, namely the Miyamoto patent, and believes that the new claims presently on file in the present request for continued examination (RCE) are patentably distinguishable with respect to the prior art. In view of the amendments to the disclosure and the remarks submitted herein, Applicant submits that all of the currently amended and new claims of record are in condition for allowance and respectfully requests that a Notice of Allowance be issued in this case in due course.

If it is felt for any reason that direct communication with Applicant's attorney would serve to advance prosecution of this application to allowance, the Examiner is invited to contact the undersigned, attorney of record in this case, Richard D. Clarke, Esq., at one of the listed below numbers or at his below listed e-mail address.

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Respectfully Submitted,
LAW OFFICE OF RICHARD D. CLARKE

By 
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